

Message Text

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ORIGIN EUR-25

INFO OCT-01 ISO-00 INRE-00 IO-14 XMB-07 OMB-01 TRSE-00

CAB-09 CIAE-00 COME-00 DODE-00 EB-11 INR-10 NSAE-00

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CIEP-02 OC-06 CCO-00 FCC-03 OTPE-00 USIE-00 PM-07

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID IMMEDIATE

INFO USCINCEUR VAHINGEN GERMANY

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C O N F I D E N T I A L STATE 213473

E.O. 11652: GDS DECEMBER 1979

TAGS: PFOR, MARR, SP

SUBJ: POSITION PAPERS FOR JOINT COMMITTEE MEETING

REF: (A) MADRID 5992

(B) MADRID 6123

(C) OSAF/USI 182203Z OCT. 73

1. POSITION PAPERS FOR PRESENTATION AT 31 OCTOBER JOINT
COMMITTEE MEETING HAVE BEEN REVIEWED AND THE FOLLOWING
CHANGES/COMMENTS KEYED TO NUMBERED AGENDA ITEMS IN REF A
AND B ARE PROVIDED.

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A. AGENDA ITEM NO. 1. SHOULD GOS RAISE QUESTION
CONCERNING AIR FORCE SPARE PARTS AND AGE EQUIPMENT, YOU
SHOULD USE OSAF MESSAGE (REF C) TO RESPOND.

B. AGENDA ITEM NO. 2. THE 3 M88 RECOVERY VEHICLES ARE NOW SCHEDULED TO BE AVAILABLE SEPT- NOV 1976 VICE 4TH QTR FY 75. DA HAS ADVISED CHIEF MUSMG/MAAG OF REASON FOR CHANGE.

C. AGENDA ITEM NO. 5. APPROVAL TO APPLY BALANCE OF EXIMBANK CREDIT TO PURCHASE OF TCN WAS PROVIDED BY SECDEF MAG 4301, 26 OCT. 1973. BALANCE OF CREDIT NO. 2852 WAS CONFIRMED AT GOS FIGURE OF DOLS 14,396,202.03 BY STATE MSG 203057. USE OF BALANCE RESTRICTED TO PURCHASE OF US GOODS AND SERVICES.

D. AGENDA ITEM NO. 7. THE FOLLOWING IS PROVIDED AS BACKGROUND DATA FOR YOUR INFORMATION ONLY. A REVIEW OF AVAILABLE HISTORICAL DATA CONCERNING PORT VISITS TO GIBRALTAR FOR 1973 IS AS FOLLOWS:

SHIP	ARRIVAL		DEPARTURE	
	DATE	DATE	DATE	DATE
AYLWIN	DE	1081	1/26/73	1/29/73
CONNOLE	DE	1056	2/4/73	2/9/73
AYLWIN	DE	1081	6/18/73	6/20/73
GARCIA	DE	1040	6/18/73	6/21/73
GLENNON	DD	840	6/20/73	6/23/73
SARSFIELD	DD	837	6/20/73	6/23/73
POWER	DD	839	6/21/73	6/21/73
SPRINGFIELD	CLG	7	9/4/73	9/5/73
SARSFIELD	DD	837	9/21/73	9/24/73
BYRD RE	DDG	33	9/21/73	9/24/73
RICKETTS CV	DDG	23	9/24/73	9/27/73
HEWES J	DE	1075	9/24/73	9/27/73

E. AGENDA ITEM NO. 8. WE SHOULD REQUEST THAT THE GOS PROVIDE DETAILED INFORMATION REGARDING SPECIFIC INCIDENTS (ALLEGED) THAT WILL ENABLE THE U.S. TO MAKE APPROPRIATE INVESTIGATION. IT IS UNCLEAR FROM REFERENCE B WHETHER ALLEGED VIOLATIONS OF SPANISH AIR TRAFFIC CONTROL PROCEDURES BY SIXTH FLEET AIRCRAFT HAVE OCCURRED
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IN INTERNATIONAL AIRSPACE OR SPANISH AIRSPACE. WE NOTE THAT AIRWAY UB-11 REFERRED TO IN REF B, RUNS THROUGH THE CENTER OF SPAIN FROM MALAGA OVER MARID TO BILBAO AND THEN OVER INTERNATIONAL WATERS ACROSS THE BAY OF BISCAY TO NANTES, FRANCE. THUS, AIRWAY UB-11 INCLUDES BOTH SPANISH AIRSPACE AND INTERNATIONAL AIRSPACE. REF B INDICATES THAT U.S. SECTION OF PERMANENT SECRETARIAT HAS RESPONDED TO ALLEGED VIOLATIONS BY CITING EXEMPTION OF U.S. MILITARY AIRCRAFT FROM 1944 CONVENTION ON CIVIL AVIATION. REF B DOES NOT TAKE INTO ACCOUNT OBLIGATIONS OF UNITED STATES GOVERNMENT UNDER PROCEDURAL ANNEX VII OF AGREEMENT OF FRIENDSHIP AND COOPERATION IN IMPLEMENTATION, WHICH APPLIES TO ALL FLIGHTS OF UNITED STATES FORCES AIRCRAFT

IN SPANISH AIRSPACE (I.E., AIRSPACE OVER SPANISH TERRITORY). PARAGRAPH 3.1 OF PROCEDURAL ANNEX VII REQUIRES THAT ALL FLIGHTS OF UNITED STATES AIRCRAFT IN SPANISH AIRSPACE " WILL BE CONDUCTED IN ACCORDANCE WITH DULY APPROVED FLIGHT PLANS" AND " SHALL BE GOVERNED BY THE GENERAL RULES OF FLIGHT IN FORCE IN SPAIN-----AND BY THE INSTRUCTIONS GIVEN BY SPANISH REGIONAL OR LOCAL AIR TRAFFIC CONTROL AUTHORITIES." ACCORDINGLY, FLIGHTS OF SIXTH FLEET AIRCRAFT IN SPANISH AIRSPACE ARE SUBJECT TO THE ABOVE QUOTED PROVISIONS OF PROCEDURAL ANNEX VII, AND THERE SHOULD BE NO OCCASION FOR AIR TRAFFIC CONTROL VIOLATIONS BY SUCH AIRCRAFT IN SPANISH AIRSPACE. PROCEDURAL ANNEX VII, HOWEVER, DOES NOT APPLY TO FLIGHTS OF UNITED STATES FORCES AIRCRAFT IN INTERNATIONAL AIRSPACE THAT HAPPENS TO BE INCLUDED WITHIN FIRS OR CONTROL AREAS ASSIGNED TO SPAIN BY ICAO FOR AIR TRAFFIC CONTROL PURPOSES. AS INDICATES IN REF B, U.S. MILITARY AIRCRAFT ARE NOT SUBJECT TO 1944 CONVENTION ON CIVIL AVIATION OR ICAO PROCEDURES PROMULGATED THEREUNDER. UNDER ARTICLE 3(D) OF THIS CONVENTION, HOWEVER, USG IS OBLIGATED TO REGULATE ITS STATE AIRCRAFT, INCLUDING MILITARY AIRCRAFT, WITH " DUE REGARD FOR THE SAFETY OF CIVIL AIRCRAFT." IN ACCORDANCE WITH ABOVE COMMENTS, FOLLOWING CHANGES SHOULD BE MADE IN RECOMMENDED U.S. POSITION SET FORTH IN REF B:

(1) DELETE THE STATEMENT THAT " THE U.S. WILL COMPLY WITH THE CONVENTION OF INTERNATIONAL CIVIL AVIATION FOR-CONFIDENTIAL

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MULATED IN CHICAGO IN 1944," AND SUBSTITUTE THEREFOR: "IN ACCORDANCE WITH ARTICLE 3(A) OF THE 1944 CONVENTION ON CIVIL AVIATION, THE CONVENTION AND ICAO PROCEDURES ESTABLISHED THEREUNDER ARE NOT APPLICABLE TO STATE AIRCRAFT SUCH AS U.S. MILITARY AIRCRAFT."

(2) ADD THE FOLLOWING ITEMS TO U.S. POSITION:

(A) " AIR TRAFFIC CONTROL OF U.S. FORCES AIRCRAFT IN SPANISH AIRSPACE IS GOVERNED BY PARAGRAPH 3 OF PROCEDURAL ANNEX VII, AND SIXTH FLEET AIRCRAFT WILL COMPLY WITH PROCEDURAL ANNEX VII WHEN OPERATING IN SPANISH AIRSPACE."

(B) " IN RECOGNITION OF THE DUTY OF U.S. MILITARY AIRCRAFT UNDER ARTICLE 3(D) OF THE 1944 CONVENTION ON CIVIL AVIATION TO ' HAVE DUE REGARD FOR THE SAFETY OF NAVIGATION OF CIVIL AIRCRAFT,' SIXTH FLEET AIRCRAFT WILL NORMALLY OBSERVE SPANISH AIR TRAFFIC CONTROL PROCEDURES WHEN CONDUCTING OPERATIONS COMPATIBLE THEREWITH IN INTERNATIONAL AIRSPACE PORTIONS OF SPANISH AIR TRAFFIC CONTROL AREAS."

(3) FYI. WE ASSUME THAT ADHERENCE TO ABOVE STATED U.S. POSITION BY SIXTH FLEET AIRCRAFT WHEN OPERATING IN INTERNATIONAL AIRSPACE PORTIONS OF SPANISH AIR TRAFFIC CONTROL AREAS WILL NORMALLY RESULT IN COMPLIANCE BY SUCH AIRCRAFT WITH ICAO FLIGHT PROCEDURES IN ACCORDANCE WITH DOD POLICY. IN THIS CONNECTION, SECTION II.A OF DOD DIRECTIVE 4540.1, "OPERATING PROCEDURES FOR UNITED STATES MILITARY AIRCRAFT OVER THE HIGH SEAS," STATES: "ALTHOUGH ARTICLE 3 (1944 CONVENTION ON CIVIL AVIATION) RECOGNIZES THAT MILITARY AND OTHER STATE AIRCRAFT ARE NOT SUBJECT TO THE CONVENTION, IT WILL NORMALLY BE DESIRABLE FOR UNITED STATES MILITARY AIRCRAFT OPERATING OVER THE HIGH SEAS TO OBSERVE ICAO FLIGHT PROCEDURES WHEN CONDUCTING OPERATIONS THEREWITH." IF DOD POLICY WITH RESPECT TO COMPLIANCE WITH ICAO FLIGHT PROCEDURES IS RAISED IN JOINT COMMITTEE MEETING, CARE MUST BE TAKEN TO EMPHASIZE THAT COMPLIANCE WITH ICAO PROCEDURES BY U.S. MILITARY/AIRCRAFT IN INTERNATIONAL AIRSPACE IS SOLELY WITHIN DISCRETION OF CONFIDENTIAL

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THE UNITED STATES GOVERNMENT AND IS NOT REQUIRED BY 1944 CONVENTION OR OTHER INTERNATIONAL LAW. U.S. MEMBERS SHOULD AVOID DISCUSSION OF LIMITS OF SPANISH TERRITORY, E.G., BREADTH OF TERRITORIAL SEA, AND OTHER LAW OF THE SEA ISSUES SUCH AS RIGHT OF AIRCRAFT TO OVERFLY INTERNATIONAL STRAITS. POSITIONS OF USG AND GOS ON THESE MATTERS DIFFER SIGNIFICANTLY IN THAT SPAIN CLAIM A SIX MILE TERRITORIAL SEA AND OPPOSES A RIGHT OF FREE TRANSIT THROUGH AND OVER INTERNATIONAL STRAITS, WHEREAS THE UNITED STATES DOES NOT RECOGNIZE VALIDITY OF TERRITORIAL SEA IN EXCESS OF THREE MILES AND HAS STATES ITS UNWILLI

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